

Message Text

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ALL AMERICAN REPUBLIC DIPLOMATIC POSTS

C O N F I D E N T I A L STATE 207143

LONDON FOR NELSON

E.O. 11652: GDS

TAGS: UNGA, PINS

SUBJECT: UNGA LEGAL COMMITTEE PROTECTION OF DIPLOMATS

REFS: (A) USUN 4020; (B) USUN 3899; (C) USUN 3963;

(D) FELDMAN/ROSENSTOCK TELCON 10/18/73

1. BROAD ASYLUM PROVISION PROPOSED BY CERTAIN LA DELEGATIONS (REF. C) GOES TO VERY HEART OF THE CONVENTION WHOSE MOST BASIC CONCEPT IS THAT PERPETRATORS OF CRIMES OF VIOLENCE AGAINST PROTECTED PERSONS SHALL BE BROUGHT TO JUSTICE. SPECIAL REASONS FOR ACCEPTING SUCH LANGUAGE IN OAS CONVENTION ARE WELL SET OUT REF (B). INCLUSION OF SUCH A BROAD PROVISION IN UN CONVENTION COULD HAVE SERIOUS SPILL-OVER EFFECTS WITH RESPECT TO CONVENTIONS ON AIR SECURITY AS WELL AS ANY FUTURE INTERNATIONAL LEGISLATION ON CONFIDENTIAL

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TERRORISM. THEREFORE, WE BELIEVE U.S. OBJECTIVE SHOULD BE

TO OBTAIN CONVENTION WITHOUT SUCH LANGUAGE EVEN IF IT
MEANS THAT A NUMBER OF LA STATES DO NOT BECOME PARTIES.
GENERALLY THOSE LA STATES WILL BE PARTY TO THE OAS
CONVENTION ON THIS SUBJECT.

2. THEREFORE, OUR FIRST PREFERENCE WOULD BE FOR THE LA'S
TO WITHDRAW THIS PROPOSAL AND TO LEAVE OPEN FOR SUBSEQUENT
RESOLUTION THE COMPATIBILITY OF THIS CONVENTION WITH THE
INTER-AMERICAN TREATIES. OUR NEXT PREFERENCE WOULD BE TO
DEFEAT THIS PROPOSAL IF THE SITUATION IN NEW YORK PERMITS.
HOWEVER, WE WOULD NOT WISH TO RISK THE LOSS OF SUCH A
VOTE AND POSSIBLE ADVERSE SECONDARY EFFECTS OF SUCH A LOSS
IF IT SHOULD PROVE POSSIBLE TO DEVELOP AN ACCEPTABLE
COMPROMISE WITH THE MEXICAN POSITION. WE AGREE WITH YOUR
POINT REF. (A) THAT OPENING THE CONVENTION TO RESERVATIONS
ON SUCH FUNDAMENTAL MATTERS WOULD BE A POOR APPROACH. WE
WOULD STILL HOPE TO FIND SUPPORT IN SOME LA DELEGATIONS
FOR THE CONCEPT THAT PROSECUTION IS NOT INCOMPATIBLE WITH
ASYLUM. HOWEVER, IF, AS YOU INDICATE, (REF. (D)) THERE
IS NO FLEXIBILITY ON THIS POINT, WE COULD SEEK A COMPROMISE
WITH THE LATIN AMERICAS ON BASIS OF PARA. 3 WHICH REFLECTS
THE FOLLOWING CONCEPTS (A) PERPETRATORS OF COVERED OFFENSES
ARE NOT ENTITLED TO ASYLUM AS A MATTER OF LAW (OAS
RESOLUTION OF JUNE 30, 1970, UNANIMOUSLY CHARACTERIZED
THESE OFFENSES AS COMMON CRIMES REGARDLESS OF MOTIVE);
(B) THE RECEIVING STATE DETERMINES THE NATURE OF THE ACTS
AND THE APPLICATION OF THE STANDARDS OF THE CONVENTION
(ART. 4 OF THE CARACAS CONVENTION ON DIPLOMATIC ASYLUM
AND ART. 3 OAS CONVENTION ON TERRORISM) AND (C) IF ASYLUM
IS GRANTED, THE LEGAL REGIME ESTABLISHED BY THE INTER-
AMERICAN CONVENTIONS APPLIES (I.E., ACCORDING TO CERTAIN
LA'S PROSECUTION WOULD NOT BE REQUIRED). THIS APPROACH
WOULD BE MUCH EASIER FOR US TO ACCEPT IF IT WERE CONFINED
TO EXISTING TREATIES ON DIPLOMATIC ASYLUM.

3. ACCORDINGLY, YOU ARE AUTHORIZED TO EXPLORE INFORMALLY
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AND AD REFERENDUM THE FOLLOWING FORMULA:

"NONE OF THE PROVISIONS OF THIS CONVENTION SHALL BE
CONSTRUED AS MODIFYING THE PROVISIONS OF EXISTING TREATIES
ON DIPLOMATIC ASYLUM WHICH ESTABLISH THE COMPETENCE OF THE
STATE GRANTING ASYLUM TO DETERMINE WHETHER THE FACTS
CONSTITUTE THE "OFFENSE" DEFINED IN ARTICLE 2 TO WHICH
THE OBLIGATIONS OF THIS CONVENTION APPLY.

4. WE WOULD WELCOME ANY OTHER FORMULAE MEETING OUR OBJECTIVES AND WOULD SUGGEST THAT FURTHER THOUGHT BE GIVEN TO POSSIBILITY OF AN LA DECLARATION ONCE REFERRED TO BY GONZALEZ-GALVEZ. KISSINGER

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